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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,673	09/05/2003	Amos Nussinovitch	85189-5100	2188
28765	7590	03/07/2006	EXAMINER	
WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006			NAFF, DAVID M	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 03/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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***Election/Restrictions***

Claims in the application are 1-40.

Restriction to one of the following inventions is required under  
35 U.S.C. 121:

- 5 I. Claims 1-21, drawn to solid cellular hydrocolloid carriers  
comprising microorganisms entrapped in dried beads having a  
moisture content of no more than 20%, classified in class  
435, subclass 182.
- 10 II. Claims 22-30, drawn to a method of controlling plant  
pathogens by applying the beads containing microorganisms to  
seeds, seedlings or plants of an agricultural crop,  
classified in class 424, subclass 93.4.
- 15 III. Claims 31-35, drawn to a method of producing cellular solid  
carriers comprising dried hydrocolloid beads and entrapped  
microorganisms, classified in class 435, subclass 174.
- 20 IV. Claims 36-40, drawn to a method of increasing viability of  
biological microorganisms by entrapping the microorganisms  
in dried hydrocolloid beads prior to applying the beads to  
an agricultural field, classified in class 435, subclass  
395.

The inventions are independent or distinct, each from the other  
because:

Inventions I and III are related as process of making and product  
made. The inventions are distinct if either or both of the following  
25 can be shown: (1) that the process as claimed can be used to make

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another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the cellular carriers of invention I can be produced by a method different than required by invention III, such as by producing the beads having pores and allowing a microorganism to be absorbed into the pores from a suspension containing the microorganism.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the cellular carriers of invention I can be used other than to control plant pathogens as required by invention II, such as can be used for *in vitro* growing of a microorganism to produce a product.

Inventions I and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, the cellular carriers of invention I can be used other than to increase viability of microorganisms as required by invention IV, such

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as can be used for *in vitro* growing of a microorganism to produce a product, and where viability is maintained without being increased.

The methods of inventions II, III and IV are different methods requiring different steps such that each method can be performed without performing any other method. Beads containing microorganisms used in the method of controlling plant pathogens of invention II and in the method of increasing viability of a microorganism of invention IV can be prepared other than required by the method of invention III for reasons set forth above in regard to the beads of invention I.

Cellular carriers resulting from the method of invention III can be used other than to control plant pathogens as in invention II and to increase microorganism viability as in invention IV, such as to grow microorganisms *in vitro* to produce a product without controlling pathogens and without increasing viability. The method of invention IV does not have to control plant pathogens as required by invention II, and the method of invention II does not have to increase viability as required by invention IV.

Examining inventions I-IV together will be a serious burden due to different searches and considerations in applying prior art required because of different metes and bounds of the claims of the different inventions.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

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Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

5       The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

10       Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the  
15 inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance  
20 with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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5 The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

10 In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims  
15 to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in  
20 accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply  
25 where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

### Conclusion

Any inquiry concerning this communication or earlier  
30 communications from the examiner should be directed to David M. Naff whose telephone number is 571-272-0920. The examiner can normally be reached on Monday-Friday 9:30-6:00.

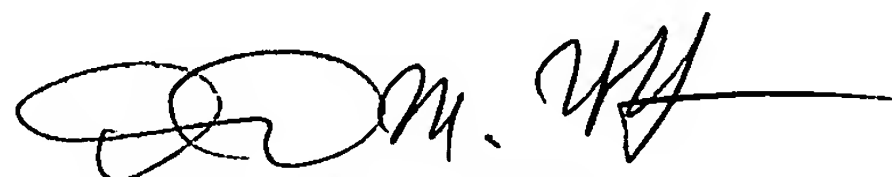
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-  
35 0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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PAIR system, contact the Electronic Business Center (EBC) at 866-217-  
9197 (toll-free).

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David M. Naff  
Primary Examiner  
Art Unit 1651

DMN

3/3/06